

**Dobbs International Services, Inc. and Shawn M. Gordon. Case 1-CA-31889**

April 11, 1997

**DECISION AND ORDER**

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

On August 7, 1996, Administrative Law Judge Raymond P. Green issued the attached decision. The General Counsel filed exceptions and a supporting brief and the Respondent filed a brief in support of the judge's decision and an answering brief to the General Counsel's exceptions.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order.

**ORDER**

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

*Michael T. Fitzsimmons, Esq.*, for the General Counsel.  
*Keith A. Warren, Esq. and Carl K. Morrison, Esq.*, for the Respondent.

**DECISION**

**STATEMENT OF THE CASE**

RAYMOND P. GREEN, Administrative Law Judge. This case was tried in Boston, Massachusetts, on May 20 and 21, 1996. The charge in this proceeding was filed by Shawn M. Gordon on July 7, 1994, and the complaint was issued by the Regional Director for Region 1 on August 30, 1994. In substance, the complaint alleges that on or about July 6, 1994, the Respondent discharged Gordon, because he joined and assisted Teamsters Local Union No. 25, a/w International Brotherhood of Teamsters, AFL-CIO.<sup>1</sup>

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed, I make the following

**FINDINGS OF FACT**

**I. JURISDICTION**

The complaint alleges, the answer admits, and I find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

<sup>1</sup> The complaint in this matter had been consolidated with complaints issued in Cases 1-CA-31703, 1-CA-32384, 1-CA-32498, and 1-CA-33377. Prior to the opening of the trial, those cases were settled and accordingly, I granted the General Counsel's motion to sever those cases from the present case.

**II. ALLEGED UNFAIR LABOR PRACTICES**

The Company operates a catering service that provides meals to airlines at various airports around the United States. In the present case, the Company took over the catering service of United Airlines at Logan Airport in Boston, Massachusetts. Employees for this service were hired in the autumn of 1993 and after a 5-week training period, began operating in January 1994. At this operation, there were about 230 employees, of which about 50 were involved in delivering food to aircraft. The remainder worked in the kitchen.

James Russo was the general manager of the Company's operations at Logan Airport. At the time of this hearing, Russo was no longer employed by the Company. Richard LaHara is the regional personnel manager.

Shawn M. Gordon began his employment in November 1993. Initially he was hired to drive vehicles that carried food or water to aircraft serviced by the Respondent. In the early part of January 1994 (after training), he drove the watering truck. On January 24, 1994, he was promoted to the position of a leadperson (CSL), whose responsibility was coordinating the people out on the field in putting food on aircraft. He subsequently received another raise and in May he received a performance award. Indeed, there is no question but that the Company considered Gordon to be an excellent worker, and he had no prior disciplinary actions before the incident that led to his discharge. In fact, the testimony of Russo was that prior to his discharge, he considered Gordon to be a potential candidate for supervision.

The Company has labor contracts with a number of unions representing employees at various of its facilities. These include the Retail, Wholesale and Department Store Union (R.W.D.S.U.), the International Brotherhood of Teamsters (I.B.T.), and the International Association of Machinists, (I.A.M.). The Company has a regional contract with the R.W.D.S.U., covering the northeast, which among other things, provides that if that Union obtains union authorization cards from a majority of employees at any facility within a certain area, the Company will recognize and bargain with it. That contract also contains a union-security clause, requiring employees to become members of the Union after 30 days of employment.

Having purchased the catering operation from United Airlines at Logan Airport, the Company opened as a nonunion operation.

In February 1994, the I.B.T. began organizing the employees of the Respondent at Logan airport. Gordon became an activist for the I.B.T. and the Company concedes that it was aware of his support for that Union.

At about the same time, the R.W.D.S.U. began its campaign to organize these same employees. In this respect, the R.W.D.S.U. was given permission by the Company to visit the cafeteria where it could talk to and distribute literature to employees on company premises. Gordon, as a proponent for the I.B.T., expressed to other employees and to management, his opposition to the R.W.D.S.U. During a conversation that he had with LaHara, Gordon asked if he would be required to join the R.W.D.S.U. LaHara told him that if that Union obtained a majority, the Company would recognize them and that although no one could be forced to join the Union, employees could be required to participate in the Union insofar as paying union dues and initiation fees.

In early May 1994, the I.B.T. notified Gordon and other employees that because of the AFL-CIO's no-raid rules, it was ceasing its organizational efforts at Logan because the R.W.D.S.U. had filed a claim. On May 13, Gordon and other employees signed a letter addressed to Teamsters President Carey, requesting, in substance, that the I.B.T. continue its organizing drive. This was to no avail. The Company was aware of this situation, and LaHara testified that in May 1994, he had a conversation with Gordon wherein Gordon expressed his disappointment in the I.B.T.'s decision to withdraw. Thus, from a practical point of view, Gordon's activities on behalf of the I.B.T. ceased about a month before his discharge. From the Company's point of view, LaHara was aware that there was no way that the Union favored by Gordon was ever going to become the representative of its employees at Logan Airport.

On June 28, 1994, Gordon worked the morning shift from 4 a.m. to 12:30 p.m. At the conclusion of his shift, he was asked to work the afternoon shift from 2:30 to 10:30 p.m. because someone was sick. He agreed and was assigned to fill up a Virgin Atlantic aircraft, using the water truck. Gordon drove the truck over to the airplane, hooked up the hose to the aircraft's water port, and turned it on. At that point, another employee named Tony Spezielli told him to help him out on a nearby aircraft. Gordon states that after being assured by this employee that he could leave the watering truck running and without being attended, he left the truck, and went to assist his fellow employee. He states that he left the motor running because the vehicle had a bad starter, and he had earlier been aware that if it was shut off, the motor could not be restarted. He also testified that he placed a stick in position at a switch so as to prevent the truck's lift from rising. Gordon testified that at various occasions while at the other aircraft, he attempted, without success to communicate via two-way radio, with the kitchen to tell them where he was and what he was doing.

After finishing his work on the other aircraft, Gordon walked back toward the Virgin Atlantic airplane and saw a crowd and a large puddle of water on the runway. He also saw that the cage of the watering truck had lifted up so that it pierced the belly of the aircraft. He was told that he had to fill out an accident report and was directed to get a drug and alcohol test. In a conversation with Russo that evening, Gordon was told that he was suspended pending investigation of the incident.

According to Gordon, he received a phone call from Russo later in the day wherein Russo said that there was a mechanical malfunction on the hydraulic lift and therefore the accident was not Gordon's fault. (Of course, if Gordon had been present, he would have seen the lift start to rise and could have shut it off.)

Russo testified that in April 1994, another employee named Basilio Santana hit an airplane when he backed up his vehicle. That employee was discharged because of the incident and he filed a charge with the EEOC and the Massachusetts Human Rights Commission alleging that because of his ethnic background, he was treated differently than another employee who was not discharged when he hit an airplane. In this respect, Russo testified that this other person (a McKinnon) was only demoted and not discharged because, although it was clear that he had driven the vehicle too close to the airplane, it was not so clear that he had actually hit

it. In any event, Russo testified that if an employee hits an airplane, this invariably leads to discharge. He gave several examples at various airports serviced by the Respondent.

According to Russo, it was against this background that he learned of the June 28 incident involving Gordon. In this regard, Russo testified that in a series of phone calls he had with Woods, his superior, and with LaHara, the Company's regional personnel director, he tried his best to save Gordon's job. His testimony, which was corroborated by LaHara, was that the Company's precedent was that if an employee hit an aircraft with a vehicle, there was simply no alternative but to discharge the employee.<sup>2</sup> And I have no doubt that the ultimate decision to discharge Gordon was probably influenced, at least to some degree, by the belief that if an exception was made for Gordon, the Company would undermine its defense against Santana's charges.

On July 7, 1994, Russo told Gordon that he was being discharged. According to Gordon, Russo said that he had gone to bat for Gordon and that the decision was made "down the line." According to Gordon, Russo said that Gordon should fight the decision.

According to Gordon, on July 8, he received a phone call from Brian Taylor, a business agent for the R.W.D.S.U., who after saying that he had heard of Gordon's discharge, said that because of his relationship with LaHara, he was sure that he could get Gordon his job back if Gordon would help him sign up employees for the R.W.D.S.U. Gordon refused.

In my opinion, Gordon was a forthright witness who was an excellent employee. Indeed, his ability and industry was attested to by Russo who tried, as best he could, to save Gordon's job. That said, and notwithstanding my sympathy for him, there is no question in my mind but that Gordon was not discharged because of his union activities, either in favor of the Teamsters or against the R.W.D.S.U. Rather, I conclude that the reason he was discharged was because he was responsible for the watering truck which hit and damaged an airplane. As the evidence shows that the Company's policy was and is to discharge any employee, whose vehicle hits an airplane, Gordon's discharge was consistent with what the Company has uniformly done in other similar situations.

#### CONCLUSION OF LAW

The Respondent has not violated the Act in any manner alleged in the complaint.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>3</sup>

#### ORDER

The complaint is dismissed.

<sup>2</sup> LaHara listed a number of prior incidents where employees had hit airplanes and testified that in every case, this had resulted in the employee's discharge. When asked if there was any exception to this policy, LaHara testified that he was not aware of any prior exceptions and could not think of a hypothetical situation that would not result in discharge.

<sup>3</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.